

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN – SOUTHERN DIVISION

THE UNITED STATES OF AMERICA,

Plaintiff,

V

Case No 1:20-CR-183-RJJ

HON. ROBERT J. JONKER

ADAM FOX, et al.

Defendants.

DEFENDANT ADAM FOX’S OBJECTION TO
GOVERNMENT’S PROPOSED EXHIBIT 422

Now Comes Defendant Adam Fox, by and through Counsel, Christopher M. Gibbons of the Law Offices of Gibbons & Boer, and objects to the Governments proposed Summary of Group Chats, Exhibit 422.

The Government is proposing to introduce a summary of the various group chats from the months of May 2020 through September 2020 pursuant to FRE 1006. Specifically, ten “pie charts” which assign a percentage of participation in each chat group to each individual chat participant. The Government is attempting to assign the relative culpability of each defendant based on the percentage of individual chat participation, regardless of whether the subject matter of the chats is relevant or relates to the underlying criminal charges.

In addition, the chats themselves contain substantial amounts of inadmissible hearsay (i.e. the out of court statements of individuals who are not defendants or alleged co-conspirators) and are otherwise inadmissible.

Third, and relatedly, "commentators and other courts have agreed that Rule 1006 requires that the proponent of the summary establish that the underlying documents are admissible in evidence. Thus, if the underlying documents are hearsay and not admissible under any exception, **a chart or other summary based on those documents is likewise inadmissible.** See generally Fed. R. Evid. 801-805. *United States v. Bray*, 139 F.3d 1104, 1109, 1998 (6th Cir). (Citation Omitted)

In addition, the Defendant contends that information relied upon in the creation of the charts is inaccurate. Wherefore, Defendant Adam Fox requests that this Honorable Court preclude the admission of the Governments proposed Exhibit 422, as it is inaccurate, based on both irrelevant chat content that is totally unrelated to the charges against the Defendants, and inadmissible hearsay

Dated March 27, 2022,

Respectfully Submitted,

/s/Christopher M. Gibbons
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